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December 10, 2010

Chairman Julius Genachowski
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of the Joint Petition of Accipiter Communications, Inc., and Qwest Corporation for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, and Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules—Application for Review (CC Docket No. 96-45)*

Dear Chairman Genachowski:

I am writing to you today, on my own behalf, to ask that you reverse a September 1, 2010 decision of the Wireline Competition Bureau ("WCB") denying the June, 2006 Joint Petition of Qwest Corporation ("Qwest") and Accipiter Communications, Inc., (d/b/a Zona Communications)("Zona") for a "Study Area" Waiver and for a Waiver of 69.3(e)(11) of the FCC rules. Zona filed an Application for Review of the WCB Decision on October 1, 2010, which is now pending before your agency.

In earlier letters dated March 5, 2007 and April 9, 2008, the Arizona Corporation Commission ("Arizona Commission") supported the Joint Petition of Zona and Qwest, having found that the transfer of the area at issue from Qwest to Zona was in the public interest.¹ Zona had already held since October 11, 1995, a certificate of convenience and necessity ("CC&N") to provide incumbent local exchange carrier ("ILEC") services in surrounding rural portions of Maricopa and Yavapai Counties, Arizona.² Since that CC&N was granted, that area now includes the northern portion of a master planned community known as Vistancia. The area at issue with the study area waiver, includes the southern portion of the development and other surrounding areas. Zona is both the carrier of last resort for this area and has been designated by the Arizona Commission as an eligible telecommunications carrier ("ETC") for the entire area.

Zona has made significant investment in infrastructure and acquired several customers in the area. Zona brings high quality basic and advanced voice and broadband services to the area, including the installation of fiber-to-the-home. This is consistent with the shared national and

¹ *In the Matter of the Application of Accipiter Communications Inc. to Extend its Certificate of Convenience and Necessity in Maricopa County*, Docket No. T-02847A-02-0641, Decision 67574 (February 15, 2005).

² *In the Matter of the Application of Accipiter Communications Inc. for a Certificate of Convenience and Necessity Authorizing the Construction and Operation of a Public Utility Telephone System in Portions of Maricopa and Yavapai Counties, Arizona*, Decision No. 59346 (Docket U-2847A-95-0026).

state policies of expanding and extending Internet access in rural areas, as well as promoting telecommunications competition.

The denial of the requested study area waiver will no doubt limit and may actually prevent Zona from serving new customers within the entire affected area, thereby preventing Zona from fulfilling its the carrier of last resort obligations. The WCB's determination appears to have been driven in large part by Comments filed by AT&T on July 24, 2006. AT&T opposed the request on the grounds that it would continue the existing USF mechanisms which AT&T believes require substantial revision. Zona's agreement to forego any USF support in the extension area moots AT&T's objection.

The WCB was also apparently persuaded by the fact that Cox is serving customers without receiving high cost support. Again, Zona's willingness to operate in the extension area without USF moots this concern. Moreover, there are many other regions of the country where competitors which have not been designated as ETCs serve in competition with carriers that have been designated as ETCs. The current situation is no different. It is also unlikely that Cox, which has not asked to be designated as an ETC for any area in Arizona, will serve customers in the immediate vicinity outside of the Vistancia development. Further, the record before the Arizona Commission established that once Cox began serving the development under a Preferred Provider Agreement, Qwest made a business decision to transfer the area to Zona.

Finally, although Zona responded to the WCB's concern by agreeing to a condition on the waiver that it would not receive High Cost Loop or Local Switching Support, the WCB decided that therefore Zona should not need a waiver at all. However, as Qwest and Zona stated in their response to AT&T's Comments, it would not be right for "a carrier to include exchanges in its study area for which it has no cost, or to prevent a carrier, which actually serves the area, from including it in its study area. Recognition of study area boundary changes is necessary whether universal service support is expected or not."³

For all of the reasons set forth herein, the FCC should grant Zona's Application for Review.

Very truly yours,



Kristin K. Mayes
Chairman, Arizona Corporation Commission

cc: Commissioner Copps
Commissioner McDowell

³ Reply Comments of Joint Petitioners filed on July 31, 2006.

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Commissioner Clyburn
Commissioner Baker
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